

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

_____	)
In the Matter of	)
	)
Draft Strategic Plan for 2006-2011	)
	)
	)
_____	)

**COMMENTS OF VERIZON<sup>1</sup> TO THE  
DRAFT STRATEGIC PLAN**

Verizon commends the Commission for its leadership in setting forth the mission and strategic goals that it seeks to accomplish in the next five years. In particular, Verizon agrees that the first two goals identified by the Commission – Broadband and Competition – are of critical importance to fulfilling the Commission’s mission and the intent of the Telecommunications Act of 1996. Today, the Commission took a significant step forward to accomplishing these goals by classifying wireline internet access service as a Title I service, eliminating *Computer Inquiry* common carrier obligations for the underlying transport and allowing competition and consumers to drive the development of broadband infrastructure and services.<sup>2</sup> In order to achieve its Strategic Goals by the end of five years, however, and indeed to achieve the nation’s goal of ubiquitous broadband deployment by 2007, the Commission should identify in the Strategic Plan the remaining actions that it will take to accomplish those goals. This should include the prompt elimination of the remaining unnecessary economic regulations

---

<sup>1</sup> The Verizon telephone companies (“Verizon”) are the companies affiliated with Verizon Communications Inc. identified in the list attached as Exhibit A hereto.

<sup>2</sup> See FCC News Release, *FCC Eliminates Mandated Sharing Requirement on Incumbents’ Wireline Broadband Internet Access Services*, (rel. Aug. 5, 2005).

for all broadband services, regardless of whether they are used to provide Internet access. By doing so, the Commission will eliminate any remaining disincentives for broadband providers to invest fully in all broadband infrastructure and services and enable true competition to respond to consumer demands.

The Commission has established a Broadband goal of providing all Americans with “affordable access to robust and reliable broadband products and services” within the next five years.<sup>3</sup> It correctly identified that regulatory policies must promote “technological neutrality, competition, investment, and innovation to ensure that broadband service providers have sufficient incentive to develop and offer such products and services.” *Id.* As Chairman Martin summarized, “[w]e must treat all such providers in the same manner – free of undue regulation that can stifle infrastructure investment.”<sup>4</sup>

The Commission’s actions today moved the country closer to achieving these goals. It is thus more important than ever to eliminate the remaining unnecessary economic regulations so that the momentum created by the Commission’s actions can carry forward to all types of broadband services. The Commission has frequently recognized that the most effective way to encourage investment and innovation in broadband networks is to refrain from regulating the broadband market and to allow competitive forces to drive product development and offerings.<sup>5</sup>

As the Commission has concluded, “deregulation or reduced regulation may lower

---

<sup>3</sup> Draft Strategic Plan at 4.

<sup>4</sup> Kevin J. Martin, *United States of Broadband*, Wall Street J., July 7, 2005, at A12.

<sup>5</sup> See, e.g., *In re Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities*, 17 FCC Rcd 4798, 4802 ¶ 5 (2002) (“*Cable Modem Declaratory Ruling*”); Martin, *United States of Broadband* at A12 (noting that “legacy regulation . . . reduces telephone companies’ incentives to provide broadband”); Drew Clark, *FCC Chief: Broadband is Top Priority*, Nat’l J. Technology Daily (May 27, 2005) (Chairman Martin: “the free market is a better way for delivering innovation to consumers”).

administrative costs, encourage investment and innovation, reduce prices and offer consumers greater choice.”<sup>6</sup> Indeed, the *Computer II* decision itself recognized that “the very presence of Title II requirements inhibits a truly competitive, consumer responsive market.”<sup>7</sup>

The Commission should thus take action now to eliminate unnecessary regulation for all remaining broadband services, regardless of whether they are used to provide Internet access. The Commission has already determined that the broadband market is competitive<sup>8</sup> and reaffirmed again today that common carrier regulations are unnecessary for broadband internet access services.<sup>9</sup> Other broadband services are similarly competitive and any remaining economic regulations are likewise unnecessary and harmful. For example, broadband competition for the large business customer is highly intense. Verizon accounts for only 4.9% of nationwide Frame Relay revenues, and only 5.1% of nationwide ATM revenues.<sup>10</sup> Competitors

---

<sup>6</sup> *Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*, 16 FCC Rcd 22745 ¶ 39 (2001); see *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, 84 FCC 2d 445, ¶ 12 (1981) (noting that even in a market that is not yet fully competitive, the costs of regulatory compliance “can have profoundly negative implications for consumer welfare” such that a reduction in regulatory burdens is appropriate).

<sup>7</sup> *Amendment of Section 64.702 of the Commission’s Rules and Regulations (Second Computer Inquiry)*, 77 F.C.C.2d 384, ¶ 109 (1980).

<sup>8</sup> See *Fourth Report to Congress on Availability of Advanced Telecommunications Capability in the United States*, 19 FCC Rcd 20540, at 13, 16 (2004) (“*Fourth Section 706 Report*”); *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd 16978, ¶ 292 (2003); *Petition for Forbearance of the Verizon Telephone Companies Pursuant to 47 U.S.C. § 160(c)*, 19 FCC Rcd 21496, ¶ 22 (2004) (“*Section 271 Order*”) (“The broadband market is still an emerging and changing market, where, as the Commission previously has concluded, the preconditions for monopoly are not present.”) and *Id.*, n.65.

<sup>9</sup> See *Cable Modem Declaratory Ruling*, ¶¶ 45-47 (waiving *Computer II* requirements to the extent they apply to providers of cable modem service); *id.* at ¶ 95 (seeking comment on Commission’s tentative conclusion that “forbearance from the requirements of Title II and common carrier regulation is appropriate in this circumstance”); FCC News Release, *FCC Eliminates Mandated Sharing Requirement on Incumbents’ Wireline Broadband Internet Access Services*, (rel. Aug. 5, 2005).

<sup>10</sup> M. Bowen et al., Schwab Soundview Capital Markets, AT&T Corp. at 2 (Jan. 21, 2004).

in this segment include long distance providers, other carriers, such as Level 3, Qwest, and XO, and, as the Commission recognized, the cable companies are also making important inroads into this segment of the market.<sup>11</sup> Unlike incumbent LECs, these providers are not subject to burdensome price regulation and thus are able to react to meet customers' needs. By eliminating unnecessary common carrier regulations for all broadband service as described above, the Commission will alleviate the disparate treatment in this market segment as well and enhance competition by giving customers more choice.

Indeed, eliminating unnecessary regulations and disparities in regulations is consistent with the Commission's mandate under the 1996 Act and federal law. The federal courts, including the Supreme Court, and the Commission have recognized the 1996 Act's overarching goals of "reduc[ing] regulation" and "promot[ing] competition in the communications industry."<sup>12</sup> It thus requires the Commission to eliminate unnecessary regulations in a number of ways and the Commission may use any of these methods to do so. First, the 1996 Act requires the Commission to review, on a biennial basis, its rules governing telecommunications carriers and to determine whether any such rules are no longer necessary in the public interest as the result of meaningful economic competition. 47 U.S.C. § 161(a). In evaluating particular

---

<sup>11</sup> *Section 271 Order* ¶ 22 ("[C]able operators have had success in acquiring not only residential and small-business customers, but increasingly large business customers as well").

<sup>12</sup> Telecommunications Act of 1996, Preamble; see, e.g., *Reno v. ACLU*, 521 U.S. 844, 857-58 (1997); *2000 Biennial Regulatory Review; Policy And Rules Concerning The International, Interexchange Marketplace*, 15 FCC Rcd 20008, ¶ 1 (2000); *2002 Biennial Regulatory Review*, 18 FCC Rcd 4726 ¶ 5 (2003) ("*2002 Biennial Review Report*"); see, e.g., *United States Telecom Ass'n v. FCC*, 359 F.3d 554, 561 (D.C. Cir. 2004); see also *Verizon Communications, Inc. v. FCC*, 535 U.S. 467, 502-03, n.20 (2002) (noting the "deregulatory and competitive purposes of the [1996] Act"); H.R. Conf. Rep. No. 104-458, at 113 (1996), reprinted in 1996 U.S.C.C.A.N. 124, 124 (explaining that the purpose of the Telecommunications Act is "to provide for a pro-competitive, deregulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services . . . by opening all telecommunications markets to competition").

regulations, the Commission must reevaluate rules “in light of current competitive market conditions.”<sup>13</sup> Under these “normal monitoring responsibilities,”<sup>14</sup> the Commission is required to “evaluate its policies over time to ascertain whether they work—that is, whether they actually produce the benefits the Commission originally predicted they would.”<sup>15</sup> Under the statute, once the Commission determines that a rule is no longer necessary in the public interest based upon competitive developments, repeal or modification must follow.<sup>16</sup>

A second way in which the Act requires the elimination of unnecessary regulation is through forbearance. Congress charged the Commission with forbearing from “any regulation or any provision of th[e Communications] Act” when it is consistent with the public interest to do so. 47 U.S.C. § 160(a)(1)-(3). The Commission may, on its own motion, grant forbearance when the public interest demands it.<sup>17</sup> Where forbearance is requested by a carrier, the D.C. Circuit has made clear that in justifying a refusal to forbear from a particular requirement, the

---

<sup>13</sup> 2002 Biennial Review Report, ¶ 21; *Cellco Partnership, d/b/a Verizon Wireless v. FCC*, 357 F.3d 88, 98 (D.C. Cir. 2004).

<sup>14</sup> *Cellco*, 357 F.3d at 99.

<sup>15</sup> *Bechtel v. FCC*, 957 F.2d 873, 881 (D.C. Cir. 1992); *see, e.g., Am. Trucking Assn's, Inc. v. Atchison, Topeka and Santa Fe Ry.*, 387 U.S. 397, 415-16 (1967) (“Regulatory agencies do not establish rules of conduct to last forever; they are supposed, within the limits of the law and of fair and prudent administration, to adapt their rules and practices to the Nation’s needs in a volatile, changing economy”); *NBC v. United States*, 319 U.S. 190, 225 (1943) (the Commission cannot retain a rule if “time and changing circumstances reveal that the ‘public interest’ is not served by application of the Regulation[ ]”); *Bechtel v. FCC*, 10 F.3d 875, 880 (D.C. Cir. 1993) (“[t]he Commission’s necessarily wide latitude to make policy based upon predictive judgments deriving from its general expertise implies a correlative duty to evaluate its policies over time to ascertain whether they work—that is, whether they actually produce the benefits the Commission originally predicted they would”).

<sup>16</sup> 47 U.S.C. § 161(b); *see Cellco*, 357 F.3d at 94 (the 1996 Act mandates that the Commission identify rules that are no longer necessary “followed by their repeal or modification”).

<sup>17</sup> *See Cable Modem Order* ¶¶ 94-95 (tentatively concluding, on its own motion, that forbearance would serve the public interest); *Core Petition for Forbearance from ISP Remand Order*, 19 FCC Rcd 20179, ¶ 27 (2004) (extending, on the FCC’s own motion, the grant of forbearance with respect to certain rules to all telecommunications carriers).

Commission must demonstrate that there is a “strong connection” between a rule and its purported public interest basis. *Cellular Telecomms. & Internet Ass’n v. FCC*, 330 F.3d 502, 512 (D.C. Cir. 2003).

With respect to advanced services specifically, “Section 706 of the 1996 Telecommunications Act directs both the Commission and the states to encourage deployment of advanced telecommunications capability to all Americans on a reasonable and timely basis . . . [and] to take action to accelerate deployment, if necessary.” *Fourth Section 706 Report* at 8. These actions include using its forbearance authority, removing barriers to infrastructure investment and otherwise promoting competition in the telecommunications market.

Federal law also requires the Commission to eliminate disparities in regulation. Notably, in instructing the Commission to encourage broadband deployment, Section 706 states that broadband should be defined and regulated “without regard to any transmission media or technology.”<sup>18</sup> In addition, the Act’s definition of a telecommunications service, which has been linked by the Commission and the courts to common-carrier regulation, makes clear that a service is included – or excluded – as a telecommunications service “regardless of the facilities used.”<sup>19</sup> The Administrative Procedure Act and the equal protection component of the Fifth Amendment’s Due Process Clause similarly prohibit the Commission from “improperly discriminat[ing] between similarly situated . . . services without a rational basis.”<sup>20</sup>

Finally, eliminating disparities in regulations will also advance other strategic goals and objectives identified by the Commission, such as universal access to communication services, accessibility of telecommunications services and technology to persons with disabilities, and

---

<sup>18</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, § 706(c)(1), 110 Stat. 56, 153 (1996).

<sup>19</sup> *Id.* § 153(46).

<sup>20</sup> *C.F. Communications Corp. v. FCC*, 128 F.3d 735, 740 (D.C. Cir. 1997).

public safety and homeland security.<sup>21</sup> Where the Commission has determined that service providers must comply with certain consumer, safety or law enforcement goals, those obligations should apply to all competitive providers of such services. Not only is this necessary to ensure that the important goals underlying those obligations will be fully met regardless of which service provider is selected by the consumer,<sup>22</sup> it ensures that the costs of such obligations are borne equally by all competing providers.

Respectfully submitted,

Of Counsel:  
Michael E. Glover

/S/

---

Edward Shakin  
Julie Chen Clocker  
VERIZON  
1515 North Court House Road  
Suite 500  
Arlington, VA 22201-2909  
(703) 351-3071

*Counsel for the Verizon telephone companies*

August 5, 2005

---

<sup>21</sup> Draft Strategic Plan at 9, 16-17.

<sup>22</sup>For example, the Commission recognized the importance of having safety standards applied to similar services when it extended E911 obligations to interconnected VoIP services. *See E911 Requirements for IP-Enabled Service Providers*, 20 FCC Rcd 10245, ¶6 (2005) (“It should therefore come as no surprise that the American public has developed certain expectations with respect to the availability of 911 and E911 emergency services via certain classes of communications devices”).

THE VERIZON TELEPHONE COMPANIES

The Verizon telephone companies are the local exchange carriers affiliated with Verizon Communications Inc. These are:

Contel of the South, Inc. d/b/a Verizon Mid-States  
GTE Southwest Incorporated d/b/a Verizon Southwest  
The Micronesian Telecommunications Corporation  
Verizon California Inc.  
Verizon Delaware Inc.  
Verizon Florida Inc.  
Verizon Maryland Inc.  
Verizon New England Inc.  
Verizon New Jersey Inc.  
Verizon New York Inc.  
Verizon North Inc.  
Verizon Northwest Inc.  
Verizon Pennsylvania Inc.  
Verizon South Inc.  
Verizon Virginia Inc.  
Verizon Washington, DC Inc.  
Verizon West Coast Inc.  
Verizon West Virginia Inc.